

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOHN P. "JACK" FLYNN and	:	
LESLIE A. FLYNN	:	
	:	
Plaintiffs,	:	1:21-cv-02587 (AS/SLC)
	:	
-v-	:	
	:	
CABLE NEWS NETWORK, INC.,	:	
	:	
Defendant.	:	
-----	X	

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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## TABLE OF CONTENTS

<i>TABLE OF CONTENTS</i> .....	<i>i</i>
<i>TABLE OF AUTHORITIES</i> .....	<i>ii</i>
<i>STATEMENT OF FACTS</i> .....	<i>1</i>
I. The Parties .....	1
II. QAnon, Generally .....	2
III. The Phrase “Where We Go One, We Go All” and #WWG1WGA .....	4
IV. Jack Promoted Tweets in Support of His Brother, Gen. Flynn.....	5
V. Leslie Was Unfamiliar with QAnon and #WWG1WGA.....	6
VI. The #TakeTheOath Movement Goes Viral .....	7
VII. Jack and Leslie Say “Where We Go One, We Go All” as Symbol of Family Unity 8	
VIII. Jack and Leslie Provide Shelter for an Indigent Fan of Gen. Flynn .....	9
IX. CNN Includes Part of Gen. Flynn’s Viral Video in the Report .....	11
X. Jack and Leslie’s Damages .....	14
XI. Procedural History .....	15
XII. MSNBC Took Steps to Protect Jack and Leslie From Being Shown in False Light When MSNBC Broadcast the Clip. ....	16
<i>ARGUMENT</i> .....	<i>16</i>
I. JACK AND LESLIE CAN ESTABLISH THE ELEMENTS NECESSARY FOR A FINDING OF LIABILITY UNDER RHODE ISLAND’S FALSE LIGHT STATUTE ....	18
II. BY IMPLYING THAT JACK AND LESLIE ARE QANON FOLLOWERS THE REPORT MAKES A “MAJOR MISREPRESENTATION” OF JACK AND LESLIE. ....	22
III. CNN CANNOT USE PUBLIC CONCERN DOCTRINE TO EVADE LIABILITY .....	25
IV. JACK AND LESLIE ARE NOT REQUIRED TO SHOW ACTUAL OR SPECIAL DAMAGES TO PREVAIL ON THEIR FALSE LIGHT CLAIM, BUT THEY CAN DO SO. 30	
V. RHODE ISLAND LAW APPLIES FOR BOTH JACK AND LESLIE .....	34
<i>CONCLUSION</i> .....	<i>35</i>
<i>CERTIFICATE OF SERVICE</i> .....	<i>36</i>

## TABLE OF AUTHORITIES

### Cases

*Allen v. Coughlin*,

64 F.3d 77, 79 (2d Cir. 1995) ..... 15, 18, 20, 22, 30, 31, 32

*Alves v. Hometown Newspapers, Inc.*,

857 A.2d, 743, 752 (R.I. 2004) ..... 15, 20, 22

*Biro v. Conde Nast*,

807 F.3d 541, 544 (2d Cir. 2015) ..... 26, 28

*Biro v. Conde Nast*,

883 F. Supp. 2d 441, 465-66 (S.D.N.Y. 2012)), *aff'd*, 788 F. App'x 76 (2d Cir. 2019)  
..... 27

*Capuano v. Outlet Co.*,

579 A.2d 469, 473 (R.I. 1990) ..... 24

*Carey v. Piphus*,

435 U.S. 247, 266 (1978)..... 29

*Carson v. Palombo*,

18 N.E.3d 1036, 1048-49 (Ind. Ct. App. 2014)..... 21

*Celle v. Filipino Reporter Enters. Inc.*,

209 F.3d 163, 183 (2d Cir.2000) ..... 26

*Connick v. Myers*,

461 U.S. 138, 147–48 (1983)..... 24, 25

<i>Faloona by Fredrickson v. Hustler Magazine, Inc.,</i>	
799 F.2d 1000 (5th Cir. 1986) .....	18, 19
<i>Flynn v. CNN,</i>	
No. 1:21-cv-2587, 2021 WL 5964129, at *4 (S.D.N.Y. Dec. 16, 2021) .....	17
<i>Fudge v. Penthouse Int’l, Ltd.,</i>	
840 F.2d 1012, 1018 (1st Cir. 1988) .....	14, 19
<i>Garrison v. State of La.,</i>	
379 U.S. 64, 74 (1964) .....	26
<i>Gertz v. Robert Welch, Inc.,</i>	
418 U.S. 323, 346 (1974) .....	23, 24, 25, 26, 30
<i>Henry v. Fox News Network LLC,</i>	
629 F. Supp. 3d 136, 151 (S.D.N.Y. 2022) .....	27
<i>Leidig v. BuzzFeed, Inc.,</i>	
371 F. Supp. 3d 134, 143 (S.D.N.Y. 2019) .....	27, 28
<i>Masson v. New Yorker Magazine, Inc.,</i>	
501 U.S. 496, 517 (1991) .....	21
<i>Pinder v. 4716 Inc.,</i>	
494 F. Supp. 3d 618, 628 (D. Ariz. 2020) .....	21
<i>Reid v. Providence Journal Co.,</i>	
20 R.I. 120, 122, 37 A. 637, 637-638 (1897) .....	14
<i>Sankey v. UTGR, Inc.,</i>	
565 F. Supp. 3d 319 (D.R.I. 2021) .....	18

*Snyder v. Phelps,*

562 U.S. 443, 453 (2011)..... 24, 25

*Swerdlick v. Koch,*

721 A.2d, 849, 861-62 (R.I. 1998) ..... 15, 16, 18, 19, 20, 23

**Statutes**

R.I. Gen. Laws § 9-1-28.1(a)(4) ..... 15, 28

R.I. Gen. Laws § 9-1-28.1(a)(4)(A) ..... 15

R.I. Gen. Laws § 9-1-28(a)..... 29

Restatement (Second) of Torts § 652E cmt. d (1977)..... 27

Restatement (Second) of Torts § 652E, cmt. c at 396) ..... 15

Restatement (Second) of Torts § 652H(a) (1977) ..... 28

As if the Flynn family had not been subjected to enough abuse by the United States government, Defendant CNN decided to make their lives worse. For no valid journalistic reason, CNN misleadingly clipped a video of Plaintiffs John P. “Jack” Flynn (“Jack”) and Leslie Flynn (“Leslie”)—in which they joined their family in solidarity to celebrate the Fourth of July and what they thought was the end of their nightmares with the wrongful prosecution of Jack’s brother—and included it in a CNN news report about followers of QAnon, labeling Jack and Leslie as QAnon followers. Neither Jack nor Leslie are QAnon followers and never have been. They hold no QAnon beliefs and have never attended a QAnon event. They are patriotic citizens and supporters of their brother. Instead of addressing this claim on the merits, CNN resorts to further smearing of the Flynn family, misleadingly mischaracterizing their testimony in depositions and continuing to advance the false claim that Jack and Leslie are affiliated with QAnon.

### **STATEMENT OF FACTS**

The facts necessary for a determination of this Motion are set forth in the Declaration of Katherine M. Bolger (“Bolger Dec.”), sworn to on the 27th day of October, 2023, and the exhibits annexed thereto, Dkt. 184, and the Declaration of Jared Roberts, filled concurrently with this memorandum, and the exhibits annexed thereto.

#### **I. The Parties**

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1. At the time of filing the First Amended Complaint (“FAC”), Dkt. 7, Jack and Leslie were citizens of Rhode Island. FAC ¶8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. Jack and Leslie are not QAnon followers, do not hold QAnon beliefs, and have never attended a QAnon event. [REDACTED]

[REDACTED]

3. Defendant Cable News Network, Inc. (“CNN”) owns and operates numerous news platforms and services, including the television network known as CNN and the website [www.cnn.com](http://www.cnn.com). Bolger Dec. ¶ 1. CNN’s employee, [REDACTED], wrote the script for and produced the Report. *See* Declaration of Jared Roberts, filed concurrently with this memorandum. [REDACTED]

[REDACTED]

[REDACTED]

## II. QAnon, Generally

4. “QAnon” is a conspiracy movement that began in 2017. It centers on the belief that a high-ranking government official(s) called “Q” is leaking secret information on online message boards in the form of coded messages. [REDACTED]

Q's online posts are called "Q drops"; there are thousands of them.

5. QAnon followers hold a series of outlandish beliefs that have grown out of these Q drops. “These views center on the idea that a cabal of Satan-worshipping pedophiles mainly consisting of what they see as elitist Democrats, politicians, journalists, entertainment moguls and other institutional figures have long controlled much of the so-called deep state government, which they say sought to undermine President Trump, mostly with aid of media and entertainment outlets.”

[REDACTED]. This “secret global cabal of Democrats and celebrities . . . worship Satan[,] sexually abuse[] children and dr[ink] their blood in order to ingest a chemical called adrenochrome.” [REDACTED] Trump is a messianic figure in QAnon. [REDACTED]. Some QAnon followers “believe there's a lineage . . . from JFK, Trump through to our Lord Jesus Christ.” [REDACTED]

6. In a CNN special report entitled “Inside the QAnon Conspiracy” that aired on January 31, 2021, “CNN called QAnon a deranged conspiracy cult. CNN stated that some of Q’s conspiracy claims were actually based on age-old racist and anti-Semitic beliefs. CNN asserted that QAnon, like the Nazis, promoted ancient and dark biases and bigotry in world history. CNN stated that QAnon supporters were detached from reality and had an utter disregard for the facts. CNN alleged that QAnon followers were mentally ill and crazy. CNN concluded that it was abundantly clear that QAnon was a dangerous and violent movement, a movement that has become insurrectionist.”



[REDACTED]

7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. Posting about Q drops on social media is central to the QAnon movement, as it greatly increased the movement's reach and visibility. Def.'s SUMF ¶ 5.

9. QAnon followers, specifically the QAnon Shaman (the man in the horned headdress), were highly visible figures in the attack on the Capitol that occurred on January 6, 2021. [REDACTED]

10. CNN was aware that the FBI had labelled QAnon as a domestic terrorist threat when it published the Report. [REDACTED]. QAnon has been the subject of significant negative media coverage. Roberts Exs. B–H. And has been condemned by a congressional resolution. [REDACTED]

### III. The Phrase “Where We Go One, We Go All” and #WWG1WGA

11. The phrase “Where we go one, we go all” appears to originate from the 1996 film *White Squall*. [REDACTED]. In that movie the phrase appears

on a bell on a ship named the Albatross. Jack had originally learned of the phrase when he watched *White Squall*. [REDACTED]

12. [REDACTED]

[REDACTED]

On Twitter, the phrase is sometimes abbreviated by the hashtag #WWG1WGA and has become associated with QAnon.

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Because this was the first time Leslie had heard that phrase, she viewed it as a family oath. [REDACTED]

#### IV. Jack Promoted Tweets in Support of His Brother, Gen. Flynn

14. Jack would promote, by liking or retweeting, tweets that supported his brother, Gen. Flynn. [REDACTED] Because QAnon followers would share messages in support of Gen. Flynn alongside QAnon hashtags, Jack occasionally promoted tweets in support of his brother that included QAnon hashtags. Bolger Ex. 52. [REDACTED]

[REDACTED]

At the time of the July 4, 2020, barbecue Jack did not know anything specific about QAnon at all besides the fact that some QAnon members supported his brother. [REDACTED]

15. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] However, Jack never associated the phrase “Where we go one, we go all” or #WWG1WGA with QAnon. *Id.* at 100:12–19. The #WWG1WGA hashtag appeared alongside various Q and non-Q hashtags in the tweets Jack promoted, including: #QAnon, #TakeTheOath; #MAGA; #IStandWithGenFlynn; #BlackFriday; #WeThePeople; #AllInForFlynnFriday; #UltimateSacrifice; #ClearFlynnNow; #QArmy; among others. [REDACTED] Bolger Exs. 43, 58. To Jack it was just another conservative hashtag, [REDACTED]

[REDACTED]

[REDACTED]

#### V. Leslie Was Unfamiliar with QAnon and #WWG1WGA

16. Leslie was only on Twitter for a short time because she didn’t “understand all the hashtags.” [REDACTED]. During her time on Twitter, she liked numerous tweets that supported her brother-in-law, Gen. Flynn, including some tweets that included #WWG1WGA and #Q separately. Bolger Ex. 39. She liked tweets because they included references to Gen. Flynn, JFK, and/or Trump not because they included #WWG1WGA or #Q. [REDACTED]

[REDACTED] Leslie didn’t even know what #Q or #WWG1WGA meant; they were just letters to her. [REDACTED] The first time Leslie heard #WWG1WGA said out loud as the phrase “Where we go one, we go all” was at the July 4<sup>th</sup> Flynn family

barbeque. [REDACTED] Leslie did not hear the term “QAnon” mentioned at the barbecue. [REDACTED]

## **VI. The #TakeTheOath Movement Goes Viral**

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17. On June 24, 2020, after the D.C. Circuit Court of Appeals ordered Judge Sullivan to dismiss the charges against Gen. Flynn, someone posting under the online pseudonym of Q advised his readers to “[t]ake the oath” and included the text of the federal oath of office, followed by the abbreviation “WWG1WGA.” Def.’s SUMF” ¶ 28. Thousands of people then began filming themselves reciting the oath to defend the United States Constitution and posting the video along with the hashtag #TakeTheOath. *Id.* at ¶ 29. By June 25, 2020, there were already 76,600 tweets with the hashtag #TakeTheOath. *Id.* at ¶ 29. The hashtag had gone viral and had spread beyond Q readers. *Id.* at ¶¶ 29, 31 and 32.

18. Jack heard about the viral #TakeTheOath challenge on social media because it was “trending” but was unaware of its connection to QAnon. [REDACTED]  
[REDACTED]. Jack and Leslie both received social media messages from Flynn family members that included both #TakeTheOath and #WWG1WGA. Bolger Ex. 41; Def.’s SUMF at ¶ 32. However, since neither Jack nor Leslie associated #WWG1WGA with QAnon, these messages did not convey to them any connection between QAnon and #TakeTheOath. [REDACTED]  
[REDACTED]

**VII. Jack and Leslie Say “Where We Go One, We Go All” as Symbol of Family Unity**

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19. After General Flynn’s legal troubles seemingly ended, his family celebrated his freedom from his charges at a July 4<sup>th</sup> barbecue. [REDACTED]  
[REDACTED] This barbeque stretched across the adjoining back yards of Jack and Leslie’s house and Gen. Flynn’s house. [REDACTED]

20. In addition to the hosts, Lori (Gen. Flynn’s wife), Joe (Gen. Flynn and Jack’s brother), and Valerie Flynn (Joe’s wife) were in attendance from the Flynn family. [REDACTED]. There were also more distant relatives and nonrelatives at this party. [REDACTED] However, only the six individuals with the last name of Flynn—Gen. Flynn, Lori, Joe, Valerie, Jack, and Leslie—participated in filming a #TakeTheOath video. [REDACTED] Other guests were not invited to join because the Flynnns were participating in the #TakeTheOath trend and saying “Where we go one, we go all” as a symbol of family unity after a very trying time had seemingly passed. [REDACTED]

21. Some members of the Flynn family were aware of the viral #TakeTheOath movement. These family members felt it was a great and patriotic thing to take an oath in support of the Constitution. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] The Flynnns filmed themselves reciting the constitutional oath of office, “Where we go one, we go all,” and “God bless America.” Bolger Ex. 2.

22. There is no evidence in the record that anyone from the Flynn family intended the video to be a show of unity with QAnon. [REDACTED] Nor is there any evidence in the Record that indicates the Flynn family understood #WWG1WGA to be a QAnon slogan at the barbecue. [REDACTED]

[REDACTED] There is also no evidence in the Record that indicates that the Flynn family knew that #TakeTheOath originated from a Q drop or even knew what a Q drop was.

[REDACTED]

23. Instead, the Record demonstrates that the hashtags #WWG1WGA and #TakeTheOath proliferated amongst tweets supporting Gen. Flynn, including tweets that didn't reference Q. They were two hashtags, among many, that were frequently included in tweets supporting Gen. Flynn.

24. Shortly after the video was taken, Gen. Flynn posted it to Twitter, making his contribution to the viral #TakeTheOath trend. Bolger Ex. 2. He and his family had no idea at that joyous barbeque that not only was the criminal case to drag on for several months, but that CNN would take that video and use it to smear and humiliate them.

#### **VIII. Jack and Leslie Provide Shelter for an Indigent Fan of Gen. Flynn**

25. Veronica Wolski, an individual who had donated to Gen. Flynn's legal defense fund, was well known on Twitter for putting up all kinds of signs on a bridge in Chicago [REDACTED]. Jack was acquainted with Ms. Wolski through his sister Barbara. [REDACTED] When he learned Ms. Wolski was traveling east, and wanted to meet Gen. Flynn, Jack reluctantly decided to let her

know she would be welcome if she made it to his house for a Labor Day cookout. [REDACTED]

26. When Ms. Wolski showed up at Jack's house for the cookout, he noticed that she was distressed and in a tough spot in life. [REDACTED]. Jack had to calm her down "because she was all excited like a groupie" to see Gen. Flynn. [REDACTED]. After Ms. Wolski informed Jack "she had no place to stay and she had been sleeping in her car on her way east at truck stops," Jack decided to get her a room at the Seaview Hotel "so she could get a shower and decent sleep." [REDACTED]

27. Later in the evening, Ms. Wolski returned to the cookout. She brought with her a wood carving of an American flag, which she presented to Gen. Flynn; a banner similar to the ones she would display on the bridge in Chicago in support of Gen. Flynn; another banner that said "God bless America"; and a box full of stickers. [REDACTED]. Some of these stickers said: "CNN Sucks"; others said: "Q Sent Me." [REDACTED] Jack and other attendees of the cookout thought these stickers were funny and took pictures with them. [REDACTED]

28. [REDACTED]  
[REDACTED] However, she seemed to mean well and had a funny sense of humor. [REDACTED]. After the cookout, Jack sent Ms. Wolski on her way with some food. [REDACTED]

**IX. CNN Includes Part of Gen. Flynn’s Viral Video in the Report**

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29. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. The Report begins by showing clips of a room of QAnon followers alongside a chyron that stated: “CNN GOES INSIDE A GATHERING OF QANON FOLLOWERS.” The Report then identifies one attendee—who is shirtless, has his face painted, and is wearing a horned headdress—as the QAnon Shaman. The Report then states the QAnon Shaman stormed the Capitol on January 6 and shows images of the QAnon Shaman in the Capitol. The Report describes the phrase “Where we go one, we go all” as the “infamous QAnon slogan promoted by Trump’s first national security adviser, Michael Flynn” before immediately cutting to a two second clip from the Flynn family’s #TakeTheOath video (the “Clip”). The Clip shows Gen. Flynn leading Lori, Jack, Leslie, Joe, and Valorie in saying “Where we go one, we go all”



with their right hands raised. The Report continues to display the chyron about “QANON FOLLOWERS” when the Clip is played. After the Clip, the Report shows the QAnon Shaman again. Next a speaker at a QAnon meeting declares, ‘We are at war now and we in this room understand that very, very much.’ Additional video of the QAnon Shaman on both January 6 and from this meeting is shown thereafter. The Report interposes violent rhetoric from a QAnon gathering with footage from the January 6 attack. The QAnon Shaman is shown again. A commentator explains that the people at the meeting “felt like they were part of something big and revolutionary and that they were opposing absolute evil.” Mr. O’Sullivan appears on screen and describes QAnon as a movement that gives license to hate, racism, and anti-Semitism. *See generally* Bolger Ex. 1.

31. From start to finish, the Report interweaves footage from January 6 and footage from QAnon meetings. The QAnon Shaman is shown numerous times throughout the Report. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

32. At the time the Report aired, however, [REDACTED] hadn’t seen Jack or Leslie’s social media accounts. [REDACTED]. Even if he had, [REDACTED]

[REDACTED] retweets are not necessarily endorsements of the original tweets or indicative of an unexpressed belief system related to the tweet. *Id.* at 15:8–

16:8. Moreover, Jack's tweets demonstrated a lack of knowledge as to what QAnon was. Roberts Exs. J, K, L. [REDACTED]

33. Nevertheless, he still decided to include the Clip in his Report, but not before cutting out the portions where the Flynns said an oath to defend the Constitution and "God bless America." [REDACTED]. CNN removed the Clip from the context in which it was created and misleadingly placed it among clips of QAnon gatherings and the January 6 attack [REDACTED]

34. Because it linked Trump and General Flynn with QAnon and the January 6 attack, [REDACTED] Trump's impeachment trial in the House, which was related to the events of January 6, was scheduled to begin 5 days after the Report aired. [REDACTED]

35. No one from CNN reached out to any of the Flynns for comment before Report aired. [REDACTED]

[REDACTED]

[REDACTED] CNN cannot credibly explain why [REDACTED]

[REDACTED]

#### **X. Jack and Leslie's Damages**

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36. After the Report aired, Jack had to defend himself and explain that he was not a QAnon follower to members of his country club, individuals he knew through pickleball, and his son. [REDACTED]. His son was told that his "parents are part of th[e] QAnon group." [REDACTED]. Jack believes there are probably millions of people that think less of him because they think he is associated with QAnon, including his neighbors in Boca Royale, Florida and Newport, Rhode Island. [REDACTED]

37. On Twitter, Jack has been harassed by people who think his is a QAnon follower because of the CNN Report. [REDACTED] Pickleball players and members of his community began keeping their distance from Jack and Leslie after the CNN Report aired. [REDACTED] Jack is fearful and uncomfortable being in his community because people stare and talk about him. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

38. Similarly, Leslie brough her claim against CNN [REDACTED]

[REDACTED]

[REDACTED] When she learned that CNN

labeled her a QAnon Follower on national television, she was “shocked,” “embarrassed and sad.” [REDACTED]. The Report damaged Leslie emotionally and affected her health by causing her to be anxious and depressed that people thought she was in QAnon. *Id.* at 198:1–6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39. Leslie had to explain to her friends Maryellen, Dawn and Kris; her sister Lori; her son Kyle; her mother; and her aunt that she was not part of QAnon because of how she was portrayed in the Report. [REDACTED]

[REDACTED]. Leslie believes that members of her pickleball community may think she’s part of QAnon. [REDACTED]

## **XI. Procedural History**

40. On March 25, 2021, Jack and Leslie sued CNN in this Court, bringing claims for defamation per se and false light invasion of privacy based on the allegation that the Report falsely accused them of being a “QAnon follower.” Def.’s SUMF. ¶ 92. On May 7, 2021, Jack and Leslie filed the FAC, again alleging defamation per se and false light invasion of privacy. *Id.* ¶ 93. On June 21, 2021, CNN moved to dismiss the FAC. *Id.* ¶ 94. On October 22, 2021, Magistrate Judge Cave issued a report and

recommendation (“R&R”) recommending dismissal with prejudice of Jack and Leslie’s defamation per se and false light claims. *Id.* ¶ 95. On December 16, 2021, this Court issued a memorandum opinion and order adopting the R&R in part and rejecting it in part. *Id.* ¶ 97. This Court dismissed Jack and Leslie’s defamation per se claim but held that their false light claim was adequately pleaded. *Id.*

41. On August 12, 2022, this Court granted in part and denied in part CNN’s motion for partial reconsideration, holding that at the pleading stage, Jack and Leslie had plausibly alleged falsity for purposes of their false light claim. *Id.* ¶ 101. Discovery proceeded and this motion followed. *Id.*

## **XII. MSNBC Took Steps to Protect Jack and Leslie From Being Shown in False Light When MSNBC Broadcast the Clip.**

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42. When it broadcast a frame from the same clip, MSNBC decided to obfuscate, or blur out, Jack and Leslie’s images. Roberts Ex. F. CNN chose not to protect Jack and Leslie from false light publicity in this manner. [REDACTED]

[REDACTED]

## **ARGUMENT**

When examining a false light claim under Rhode Island law “the court should make the threshold determination of whether a statement is capable of implying the objectionable association of which the plaintiff complains.” *Fudge v. Penthouse Int’l, Ltd.*, 840 F.2d 1012, 1018 (1st Cir. 1988). As the Rhode Island Supreme Court stated long ago “if the language is not reasonably capable of conveying to the ordinary mind the defamatory meaning alleged in the innuendo, it is the province and duty of the

court to so declare, and to deny the right to maintain an action thereon.” *Reid v. Providence Journal Co.*, 20 R.I. 120, 122 (1897).

A finding of liability under Rhode Island’s false light statute requires establishing two elements: “(A) There has been some publication of a false or fictitious fact which implies an association which does not exist; and (B) The association which has been published or implied would be objectionable to the ordinary reasonable man under the circumstances.” R.I. Gen. Laws § 9-1-28.1(a)(4). This objectionable association must amount to “such a major misrepresentation of [plaintiff’s] character, history, activities or beliefs that serious offense may reasonably be expected to be taken by a reasonable [person] in his [or her] position.” *Alves v. Hometown Newspapers, Inc.*, 857 A.2d, 743, 752 (R.I. 2004) (quoting *Swerdlick v. Koch*, 721 A.2d, 849, 861–62 (R.I. 1998) and Restatement (Second) of Torts § 652E, cmt. c at 396).

When considering a summary judgment motion, the Court must “view the evidence in the light most favorable to the non-moving party . . . and may grant summary judgment only when ‘no reasonable trier of fact could find in favor of the nonmoving party.’” *Allen v. Coughlin*, 64 F.3d 77, 79 (2d Cir. 1995) (internal citations omitted). Accordingly, Jack and Leslie need only show that there is evidence that, when viewed in the light most favorable to them, is reasonably capable of implying to an ordinary mind that an objectionable association exists.

They have done so here.

**I. JACK AND LESLIE CAN ESTABLISH THE ELEMENTS  
NECESSARY FOR A FINDING OF LIABILITY UNDER RHODE  
ISLAND’S FALSE LIGHT STATUTE**

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Jack and Leslie are not QAnon followers, do not hold QAnon beliefs, and have never attended a QAnon event. Statement of Facts, *supra*, (“SOF”) at ¶ 2.

Nevertheless, CNN’s Report erroneously characterized Jack and Leslie as QAnon followers in numerous ways. *See* R.I. Gen. Laws § 9-1-28.1(a)(4)(A). First, the Report displays the words “QAnon Followers” in a chyron while showing a video clip of Jack and Leslie. SOF at ¶ 30. While this chyron is displayed, the Report juxtaposes images of Jack and Leslie with images of QAnon followers, such as the QAnon Shaman, and the January 6 attack. *Id.* The Report refers to the “infamous QAnon slogan promoted by Trump’s first national security adviser, Michael Flynn” immediately before showing Gen. Flynn reciting the phrase, “Where we go one, we go all” while his family stands with him with their right hands raised. *Id.* The Report, thus, implies that Jack and Leslie said this phrase as an oath to QAnon and/or because they were QAnon followers. *Id.* at ¶ 31. [REDACTED]

[REDACTED]

[REDACTED] The Report misleadingly omits the context that they had just recited the federal oath of office, swearing to defend the United States Constitution, in celebration of what they believed was the imminent dismissal of charges against Gen. Flynn. *Id.* at ¶¶19–21, 33.

Accordingly, when” [v]iewed as a whole” the Report was “capable of creating false public impressions concerning” Jack and Leslie’s involvement with QAnon and

with the January 6 riots. *See Swerdlick v. Koch*, 721 A.2d 849, 862 (R.I. 1998). The fact that Jack and Lesli’s friends and family had to be assured that Jack and Leslie were not QAnon followers after the Report aired demonstrates how effectively the Report placed Jack and Leslie in this false light. [REDACTED]

As Magistrate Judge Cave recognized, when looking at the Report, it is difficult to parse out a distinction between images of the January 6 rioters and the Flynn family. Dkt. No. 33. Magistrate Judge Cave continued, noting that it appears Defendant linked the Flynns and the rioters together and that Defendant’s arguments to the contrary are not convincing. *Id.* Further, Magistrate Judge Cave commented that the tone of the whole Report is “these people, everybody that were showing you is a QAnon follower.” *Id.* at 9:8–11. Indeed, this Court has already interpreted this banner to apply to the Flynn family at the motion to dismiss stage. *See Flynn v. CNN*, 2021 WL 5964129, at \*4 (S.D.N.Y. Dec. 16, 2021).

Being falsely labeled a QAnon follower in a Report that also included footage of the QAnon Shaman and the January 6 attack “would be objectionable to an ordinary reasonable man under the circumstances.” *See* R.I. Gen. Laws § 9-1-28.1(a)(4)(B). Jack and Leslie have introduced evidence that QAnon followers hold a collection of conspiratorial, outlandish beliefs and that QAnon has been designated as a violent extremist movement. SOF at ¶¶ 4–7, 10. In the Report itself, O’Sullivan describes QAnon as a movement that gives license to hate, racism, and anti-Semitism. *Id.* at ¶¶ 7, 30. Indeed, implying that someone is a QAnon follower in the manner the Report does is so obviously objectionable that CNN does not bother to



dispute that this element of a false light claim is met. Accordingly, Jack and Leslie can establish both statutory elements of a cause of action for false light.

Defendant's attempt to find shelter from liability using *Sankey v. UTGR, Inc.* is misplaced. *See* 565 F. Supp. 3d 319 (D.R.I. 2021). *Sankey* was concerned with an employer's decision to provide law enforcement with a security video of the plaintiff allegedly putting drugs into her purse. *Id.* at 322. The court in *Sankey*, found the "decision to provide State Police with the surveillance video was not . . . a false . . . statement," especially when the video was unedited and provided an accurate representation of what occurred. *Id.* at 324

Unlike *Sankey*, this case does not involve CNN's republishing of the unedited version of the Flynns' Fourth of July video reciting the constitutional oath of office, the phrase "Where we go one, we go all," and the exclamation "God bless America!" SOF at ¶ 21. Instead, CNN chose to republish only a short clip from the Flynns' video, taken out of its context as being part of a family gathering in celebration of country and family and the viral trend of swearing to defend the Constitution, and embedded it in a segment that specifically concerned "QAnon Followers" and referenced #WWG1WGA as the "QAnon slogan." *Id.* at ¶¶ 30, 33. Accordingly, because the Report's inclusion of the clip is capable of creating an inaccurate public impression concerning Jack and Leslie's involvement with QAnon, a reasonable factfinder could conclude that the Report made a false statement about Jack and Leslie. *See id.; Allen*, 64 F.3d at 79; *Swerdlick*, 721 A.2d at 862.

Defendant's cases *Faloon by Fredrickson v. Hustler Magazine, Inc.*, 799 F.2d 1000 (5th Cir. 1986), *rehearing denied* 802 F.2d 455 (1986), and *Fudge* are also off point. In these cases, plaintiffs sued adult magazine companies that wrote articles about them because they felt such publication put them in the false light of being associated with these adult magazines. *See Faloon*, 799 F.2d at 1006; *Fudge*, 840 F.2d at 1014. These cases are distinguishable because Jack and Leslie are not suing CNN because CNN's coverage of them implied that they were associated with CNN. Instead, they are suing CNN because CNN's coverage of them implied their association with a third-party, *i.e.* QAnon followers. Thus, neither *Faloon* nor *Fudge* concern facts similar to the facts of this case.

Moreover, in both of those cases, the context of the adult magazines' publication dispelled any hint of an association with plaintiffs. *See Faloon*, 799 F.2d at 1007; *Fudge*, 840 F.2d at 1019. Specifically, in *Fudge*, the Court found that the context in which plaintiffs were shown left "absolutely no room for the implication" of an objectionable association. 840 F.2d at 1019. In contrast, here, the context in which CNN depicted the Flynns—alongside the words "QAnon Followers", about to recite what is referred to as a "QAnon slogan", and in a Report that featured the "QAnon Shaman"—left ample "room for the implication" that Jack and Leslie were QAnon followers. *Contra id.*

In sum, the CNN Report is capable of implying a highly objectionable association that did not exist. *See id.* at 1018; *Swerdlick*, 721 A.2d at 862. Jack and Leslie did not recite the phrase "Where we go one, we go all" to signify their connection

with QAnon or because they were QAnon followers. SOF at ¶ 32. However, this is exactly what the Report implies, especially when it is viewed, as it must be, in the light most favorable to Plaintiffs. *See Allen*, 64 F.3d at 79. Therefore, Defendant's motion for summary judgment must be denied.

## **II. BY IMPLYING THAT JACK AND LESLIE ARE QANON FOLLOWERS THE REPORT MAKES A "MAJOR MISREPRESENTATION" OF JACK AND LESLIE.**

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By implying that Jack and Leslie are QAnon followers, the Report makes "a major misrepresentation of [plaintiffs'] character, history, activities or beliefs" that was capable of causing them serious offense, and did, in fact offend them. *See Alves*, 857 A.2d, at 752.

CNN attempts to move the goalposts by arguing that because Jack and Leslie "aligned themselves with QAnon" followers it was permissible to call them QAnon followers themselves. This so-called alignment occurred because many QAnon followers were enthusiastic supporters of Gen. Flynn. SOF at ¶¶ 14–16, 23. In effect, CNN argues it was not a "major misrepresentation" to characterize Jack and Leslie as QAnon followers themselves because they had polite and friendly exchanges with QAnon followers supportive of Gen. Flynn online and in life.

CNN's attempts to characterize Jack and Leslie's alignment with QAnon in supporting Gen. Flynn as essentially the same as being labeled a QAnon follower must fail because being labeled a QAnon follower is "capable of creating false public impressions" regarding one's acceptance of QAnon beliefs and attendance at QAnon events in a way that is lacking with regard to someone who is merely friendly with

QAnon followers. *See Swerdlick*, 721 A.2d at 862. In other words, “the gist, the sting” of being labeled a QAnon follower is that you are like the QAnon Shaman. *See Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 517 (1991). This libelous charge is not justified here because one can be polite and friendly with QAnon followers who have shown support for Gen. Flynn without holding any QAnon beliefs or participating in any QAnon events. *See id.* This qualitative difference between being a QAnon follower and being aligned with QAnon is more than a “[m]inor inaccuracy[y].” *See id.* This difference changes the substance of the association from “your acquaintance is like the QAnon Shaman” to “you are like the QAnon Shaman.” For these reasons, it is wrong to say that Jack and Leslie “cast [themselves] in essentially the same light as [CNN’s] statements.” *See Carson v. Palombo*, 18 N.E.3d 1036, 1048–49 (Ind. Ct. App. 2014) (citation omitted).

This case is like *Pinder v. 4716 Inc.*, 494 F. Supp. 3d 618, 628 (D. Ariz. 2020). In *Pinder*, models sued owner of a strip club, alleging that defendant posted advertisements using plaintiffs' images on the strip club's Facebook page to advertise the strip club without their permission. *Id.* The court reasoned that a jury could find that linking a model to entertainment at a strip club presented a major misrepresentation even when the model had previously modeled in the nude, posed with a stripper pole, or played an exotic dancer in film. *Id.* Just as it was a major misrepresentation to imply that a model is a stripper simply because she previous engaged in activities evocative of a stripper, it is a major misrepresentation to imply

that Jack and Leslie are QAnon followers simply because they previously engaged with QAnon followers. *See id.*

This case can be distinguished from *Patrick v. Daily Beast Co.*, in which the court rejected the judge’s claim that a *Daily Beast* headline falsely called her “QAnon-linked.” 2023 WL 3627836, at \*3 (E.D. Pa. May 24, 2023). In that case, the court held that “[t]he fact that [the judge] denied a Q[A]non link does not negate her interview with a Q[A]non supporter or that she was listed as a speaker for a Q[A]non-affiliated conference.” *Id.* In other words, the insinuation that occurred in *Patrick* was literally true given the judge’s actions did create a “link” between her and QAnon. Here, however, the insinuation leveled against Jack and Leslie—that they are “QAnon Followers” just like the QAnon Shaman—is completely false. SOF at ¶ 2.

When the evidence is viewed in the light most favorable to Plaintiff, the Report is capable of implying the “major misrepresentation” that Jack and Leslie are QAnon followers when they did not hold any QAnon beliefs or attend any QAnon events at all. *See Allen*, 64 F.3d at 79; *Alves*, 857 A.2d, at 752. As this Court has already found, “a QAnon follower is an adherent to the QAnon belief system . . . not merely someone who read or forwarded tweets about QAnon.” Dkt. No. 65, at 5–6.

Additionally, the Report is capable of implying the “major misrepresentation” that Jack and Leslie had any association whatsoever with the QAnon followers who stormed the Capitol on January 6, 2021, such as the QAnon Shaman. SOF at ¶¶ 30, 33, 34. [REDACTED]

See *Allen*, 64 F.3d at 79; *Alves*, 857 A.2d, at 752.

This kind of “unreasonable and highly objectionable publicity [that] . . . attribute[s] to [plaintiffs] characteristics, conduct or beliefs that are false” constitutes the very nature of a false light claim. *Swerdlick*, 721 A.2d at 861. That MSNBC decided to obfuscate Jack and Leslie’s images when it broadcast a frame from the same clip further underscores the unreasonable and highly objectionable nature of the publicity CNN needlessly, and incorrectly, gave to Plaintiffs. SOF at ¶ 42. Accordingly, the Defendant’s motion for summary judgement must be denied because there is abundant evidence in support of each element of a false light claim.

### **III. CNN CANNOT USE PUBLIC CONCERN DOCTRINE TO EVADE LIABILITY**

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While the general substance of the Report may be a matter of public concern, the question for this Court is whether the inclusion of the Jack and Leslie’s images in the Report was of concern to the public. No legitimate public interest was furthered by including Jack and Leslie’s images in the Report when: (1) neither Jack nor Leslie are public figures; and (2) the clip does not relate to the public concern that is the subject of the Report.

Only “a statement of opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection.” *Beattie v. Fleet Nat. Bank*, 746 A.2d 717, 724 (R.I. 2000) (quoting *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990)). A video clip “deals with

matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community[] or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.” *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (internal quotations and citation omitted). “Whether [the Clip] addresses a matter of public concern must be determined by the content, form, and context . . . as revealed by the whole record.” *Connick v. Myers*, 461 U.S. 138, 147–48 (1983).

Whether or not Jack and Leslie are QAnon followers is a “provably false factual connotation” and thus not entitled to “receive full constitutional protection.” *Beattie*, 746 A.2d at 724. Moreover, whether Jack or Leslie said “Where we go one, we go all” is not a matter of public concern. Indeed, even if Jack and Leslie intended to pledge loyalty to QAnon when they said, “Where we go one, we go all,” this would not be a matter of public concern because they are not public figures. Given that Jack and Leslie only meant to say this phrase as a statement of family unity, the use of the clip in the Report is not of any value or concern to the general public at all. *See Snyder*, 562 U.S. at 453; *Connick*, 461 U.S. at 147–48.

CNN’s argument that Jack and Leslie are limited public figures fails. Limited public figures must have all of the following characteristics:

- (1) successfully invited public attention to his views in an effort to influence others prior to the incident that is the subject of litigation;
- (2) voluntarily injected himself into a public controversy related to the subject of the litigation;
- (3) assumed a position of prominence in the public controversy; and
- (4) maintained regular and continuing access to the media.

*Lerman v. Flynt Distrib. Co.*, 745 F.2d 123, 136–37 (2d Cir. 1984). Jack and Leslie did not invite public attention to their views on QAnon to influence other’s views on QAnon. They did not inject themselves into any public controversy about QAnon. Jack and Leslie, unlike the QAnon Shaman (an actual limited public figure), did not assume a position of prominence in relation to QAnon. Neither did they maintain regular and continued access to the media. Accordingly, they are not limited public figures. *See id.*

In fact, at the motion to dismiss stage, this Court already found Jack and Leslie Flynn to be private figures because Jack and Leslie do not have public jobs, the video was taken during a private barbeque, and beyond posting on Twitter, Jack and Leslie did not speak to any media outlets about QAnon. Dkt. No. 38, at 23–24.

Moreover, to the extent Jack or Leslie engaged with any public controversy at all, this was only in relation to the viral #TakeTheOath trend. The Report, however, is completely silent about the fact that this video related to the viral #TakeTheOath trend, despite CNN being well aware of the video’s origins. SOF at ¶ 31; Def.’s SUMF ¶ 77. CNN admits the Report is about the “increasing prominence of QAnon in American politics.” Def.’s MSJ at p.32. And neither Jack nor Leslie had injected themselves into a public controversy of that nature prior to the Report’s publication.

CNN’s argument that “the decision of Gen. Flynn to ‘promote’ the QAnon Slogan” made the clip a matter of public concern must fail. Gen. Flynn was not promoting QAnon in the clip. SOF at ¶ 21. Instead, the clip only concerned the Flynn family’s participation in the viral #TakeTheOath trend. *Id.* To the extent Gen. Flynn’s



mere utterance of the phrase “Where we go one, we go all” can be said to relate to a public concern, it was more than feasible for CNN to broadcast this fact without erroneously linking Jack and Leslie to QAnon. At the very least, CNN could have taken the reasonable precaution to blur out Jack and Leslie’s images like MSNBC did. *Id.* at ¶ 42.

In sum, the Clip, which does not show any QAnon followers or even deal with QAnon, is not the subject of legitimate news interest when CNN included it in a Report expressly about QAnon followers, their beliefs, and their activities. *See Snyder*, 562 U.S. at 453.

To the extent Jack and Leslie must show that CNN acted with actual malice, they must establish that the challenged statement was made with “knowledge that the statements were false or with reckless disregard as to their falsity.” *Biro v. Conde Nast*, 807 F.3d 541, 544 (2d Cir. 2015) (citation omitted). The reckless disregard standard requires that CNN “entertained serious doubts as to truth of [the] publication,” *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968), or had a “high degree of awareness of . . . probable falsity.” *Garrison v. State of La.*, 379 U.S. 64, 74 (1964). “Although actual malice is subjective, a court typically will infer actual malice from objective facts,’ understanding that a defendant in a defamation action will rarely admit that he published the relevant statements with actual malice.” *Biro*, 807 F.3d at 545 (quoting *Celle v. Filipino Reporter Enters. Inc.*, 209 F.3d 163, 183 (2d Cir. 2000)).

This standard is met here. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. CNN never attempted to contact the Flynns to ask about their involvement in QAnon. [REDACTED] And CNN failed to blur out Jack and Leslie's images in the Clip. *Id.* at ¶ 42. In sum, CNN took no action whatsoever to ensure the Report did not put Jack and Leslie in a false light even though it knew that Jack and Leslie were likely not QAnon followers. This demonstrates a reckless disregard for the truth sufficient to support a finding of actual malice. *See St. Amant*, 390 U.S. at 731; *Garrison*, 379 U.S. at 74; *Biro*, 807 F.3d at 545.

Like a defamation by implication claim, a false light claim can be supported by evidence "that the author intends or endorses the defamatory inference." *Leidig v. BuzzFeed, Inc.*, 371 F. Supp. 3d 134, 143 (S.D.N.Y. 2019) (citing *Biro v. Conde Nast*, 883 F. Supp. 2d 441, 465–66 (S.D.N.Y. 2012)), *aff'd*, 788 F. App'x 76 (2d Cir. 2019) (internal quotation marks omitted); *see Henry v. Fox News Network LLC*, 629 F. Supp. 3d 136, 151 (S.D.N.Y. 2022) (holding that a false light claim is "analogous to a claim for defamation by implication."). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This is an admission of actual malice. *See Biro*, 807 F.3d at 545.

**IV. JACK AND LESLIE ARE NOT REQUIRED TO SHOW ACTUAL OR SPECIAL DAMAGES TO PREVAIL ON THEIR FALSE LIGHT CLAIM, BUT THEY CAN DO SO.**

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Jack and Leslie's false light claim is based in statute. This fact negates CNN's argument, which only relies on Restatement (Second) of Torts § 652H(a) (1977) without any reference at all to the actual text of the statute.

This statute, R.I. Gen. Laws § 9-1-28.1(a)(4), establishes the right to be secure from false light publicity and explains when this right is violated. This provision reads:

(a) **Right to privacy created.** It is the policy of this state that every person in this state shall have a right to privacy which shall be defined to include any of the following rights . . .

(4) The right to be secure from publicity that reasonably places another in a false light before the public;

(i) In order to recover for violation of this right, it must be established that:

(A) There has been some publication of a false or fictitious fact which implies an association which does not exist;

(B) The association which has been published or implied would be objectionable to the ordinary reasonable man under the circumstances;

In the next sub-section, the statute creates a right of action. This provision reads:

(b) **Right of action.** Every person who subjects or causes to be subjected any citizen of this state or other person within the jurisdiction thereof to a deprivation and/or violation of his or her right to privacy shall be liable to the party injured in an action at law, suit in equity, or any other appropriate proceedings for redress in either the superior court or district court of this state. The court having jurisdiction of an action brought pursuant to this section may award reasonable attorneys' fees and court costs to the prevailing party.

Critically, the Rhode Island Legislature did not make actual or special damages an element of a claim for false light when they established this right of action by statute. Instead, the statute expressly states that a court “may award reasonable attorneys' fees and court costs to the prevailing party” regardless of how minor their damages may be, and even if only nominal.

The Rhode Island legislature clearly knows how to create a cause of action that requires proof of actual or special damages. In the preceding section, § 9-1-28, the Rhode Island legislature created a right of action for the “unauthorized use of name, portrait, or picture,” which provides that a plaintiff “may recover damages for any injuries sustained by reason of such [unauthorized] use.” *See* R.I. Gen. Laws § 9-1-28(a).

In contrast, § 9-1-28.1 does not require a plaintiff trace their damages to an injury caused by the wrong. Instead, § 9-1-28.1 can be fairly read to make the deprivation of individual’s right to privacy a compensable injury in its own right. Indeed, as the Supreme Court has discussed:

[C]ourts traditionally have vindicated deprivations of certain “absolute” rights that are not shown to have caused actual injury through the award of a nominal sum of money. By making the deprivation of such

rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously observed.

*Carey v. Phipus*, 435 U.S. 247, 266 (1978). A fair reading of § 9-1-28.1 indicates that this statute was intended to create such an “absolute right” that had to be “scrupulously observed.” Section 9-1-28.1(a) itself declares “[i]t is the policy of this state that every person in this state shall have a right to privacy.”

Accordingly, the text and construction of Rhode Island’s false light statute should be read to allow a jury to award nominal damages, provided some degree of negligence is also proven. *See id.*; *see also Gertz*, 418 U.S. at 347 (“[S]o long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual.”). Therefore, CNN’s motion for summary judgement should be denied because Jack and Leslie can establish the elements necessary to entitle them to at least nominal damages, along with attorneys’ fees. A reasonable factfinder could determine CNN was negligent when it paired video of Jack and Leslie with a chyron that said “QAnon Followers” despite having no evidence that Jack or Leslie held any QAnon beliefs and without attempting to contact any of the Flynnns for comment. SOF at ¶¶ 29–35.

To the extent that Jack and Leslie must prove something beyond nominal damages to survive this motion, they can do so. When the evidence before the court is viewed in the light most favorable to Jack and Leslie, as it must be, Jack and Leslie

are each able to meet their burden of establishing that they were damaged by CNN's Report. *See Allen*, 64 F.3d at 79.

After the Report aired, Jack was forced to defend himself when acquaintances, friends, and even his son inquired whether he was associated with QAnon or the QAnon Shaman. SOF at ¶¶ 36–37. On Twitter, Jack has been openly attacked by users because his image appears in the Report. *Id.* at ¶ 37. He observed people in the community keeping their distance from him after the Report aired. *Id.* The Report has caused Jack to feel shame, humiliation, anxiety, stress, depression, and even paranoia because he can never be certain whether an individual he encounters wrongly believes he is a QAnon follower. *Id.* at ¶¶ 36–37

By associating her with QAnon, the Report damaged Leslie reputationally and emotionally and affected her health. *Id.* at ¶¶ 38–39. When she initially heard that CNN labeled her a QAnon follower on national television she was “shocked,” “embarrassed and sad.” *Id.* at ¶38. She subsequently became anxious and depressed about what people who saw the Report would think of her. *Id.* Like her husband Jack, she too had to assure her son that his parents were not part of QAnon after her son's friends inquired about it. *Id.* at ¶ 39. She had to have similar conversations to explain she was not part of QAnon with multiple friends and family members. *Id.* She thinks some members of the pickleball community still believe she is a QAnon follower. *Id.*

Leslie discussed the stress the CNN Report had caused her with a nurse practitioner. *Id.* at ¶ 38. [REDACTED]

[REDACTED]

[REDACTED]

Under a cause of action for false light, a plaintiff “who is publicly placed in a false light . . . may recover damages for the harm to his reputation from the position in which he is placed.” Restatement (Second) of Torts § 652H(a) (1977). Moreover, a “plaintiff may also recover damages for emotional distress or personal humiliation.” *Id.* at § 652H(b). “The proof of actual harm need not be of pecuniary loss and in the case of emotional distress may be simply the plaintiff’s testimony.” *Id.* at § 652H(c). Accordingly, because a reasonable factfinder could conclude that Jack and Leslie were caused reputational harm, emotional distress, and/or personal humiliation entitling them to damages, CNN’s motion for summary judgement must be denied. *See Allen*, 64 F.3d at 79.

Finally, because Jack and Leslie are private figures who can prove actual malice, a reasonable jury may decide to award them punitive damages. *See Gertz v. Robert Welch, Inc.*, 418 U.S. at 348–49 (holding States may permit recovery of punitive damages only “on a showing of knowledge of falsity or reckless disregard for the truth.”)

#### **V. RHODE ISLAND LAW APPLIES FOR BOTH JACK AND LESLIE**

At the time the Report aired, Jack and Leslie were both Rhode Island residents. SOF ¶ 1. [REDACTED]

[REDACTED]

[REDACTED]

## CONCLUSION



### **CERTIFICATE OF SERVICE**

I certify that on December 20, 2023, a copy of the foregoing was filed with the Clerk using the Court's CM/ECF system, which will send a copy of all counsel of record.

/s/ Jason C. Greaves

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